No. 91-1151

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

JOHN J. ADKINS, *et al.*,

Petitioners,

v.

GENERAL MOTORS CORPORATION
AND
INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE & FURNITURE WORKERS, AFL-CIO, LOCAL 801
AND
INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE & FURNITURE WORKERS, AFL-CIO,

Respondents.

On Petition For Certiorari To The United States Court of Appeals For the Sixth Circuit

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BRIEF OF IUE LOCAL 801 AND THE IUE IN OPPOSITION TO PETITION FOR CERTIORARI

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COUNTERSTATEMENT OF QUESTIONS FOR REVIEW

(1) Whether the United States Court of Appeals for the Sixth Circuit erred in finding that Petitioners' fraud, misrepresentation, tortious interference and emotional distress claims, which arise out of a collectively bargained agreement, are preempted by § 301 of the Labor-Management Relations Act?

(2) Whether the United States Court of Appeals' finding of federal preemption in this case is in conflict with that of the Fifth Circuit Court of Appeals in *Wells v. General Motors Corporation*, 881 F.2d 166 (5th Cir. 1989)?

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OPINIONS BELOW

The opinion of the Court of Appeals for the Sixth Circuit (Pet. App., pp. 1-26) is reported at 946 F.2d 1201. The district court's opinion sustaining, in part,

Respondents' motions for summary judgment, is unreported. The district court's opinion granting, in part, Respondents' motions for reconsideration of the court's decision on petitioners' motion to remand is reported at 713 F.Supp. 1043.

JURISDICTION

The judgment of the court of appeals was entered in October 15, 1991. The petition for a writ of certiorari was filed on January 13, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

COUNTERSTATEMENT OF THE CASE

Respondent Unions, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, Local 801 and International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, (hereafter referred to as the "Unions"), file this brief in opposition to the Petition for a Writ of Certiorari.

This action was originally filed by the *Adkins* plaintiffs (Petitioners in the case before this Court) in the Common Pleas Court of Montgomery County, Ohio, on September 19, 1983. Respondents in this case sought jointly to remove this matter to the United States District Court, pursuant to 28 U.S.C. Sec. 1441, on the ground that original jurisdiction under federal labor laws was vested in the courts of the United States.

The complaint filed by the *Adkins* plaintiffs in state court was of similar length and style, and contained the same allegations as the complaint Case No. C-3-

82-011, filed on January 18, 1982, in federal district court pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. Sec. 185, and Section 101(a)(1) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. Sec. 411(a)(1). This latter action was disposed of by decision of the United States Court of Appeals for the Sixth Circuit in *Adkins v. International Union of Electrical, Radio, and Machine Workers, AFL-CIO-CLC, et al.*, 769 F.2d 330 (6th Cir. 1985), which held that the claim that the Unions failed to represent the *Adkins* plaintiffs in negotiations which eliminated their seniority rights, and the claim that the Unions had denied them informed and meaningful participation in deliberating and voting for a collective bargaining agreement, were barred by the statute of limitations. See, *Del Costello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983).

After the *Adkins* plaintiffs learned that their federal court action was time-barred, a case was filed in state court seeking a second bite at the proverbial "apple". This complaint was identical to that in the first case, and contains Four Counts. Count One alleged a claim against the Unions for a failure to properly negotiate and adopt the collective bargaining agreement. The Second Count claimed that the Unions made misrepresentations of fact during the ratification process. The Third Count alleged a breach by the Unions of fiduciary obligations owed to Petitioners. The Fourth Count alleged that in the negotiation and ratification process the Unions caused emotional distress to the Petitioners.

These legal attacks against Respondent Unions had their genesis in the sale by General Motors of the assets of its Frigidaire Division to White Consolidated

Industries. General Motors retained the plants in which the Frigidaire Division conducted its operations in Dayton in order to convert them to a Chevrolet truck assembly plant and a Chevrolet diesel engine plant. At the time of this sale Respondent Unions represented the factory workers of the Frigidaire Division of General Motors, and of the Delco Air Conditioning Division of General Motors, which had split from Frigidaire in 1974. The Delco Air Conditioning employees received higher wage rates than Frigidaire employees because they were involved in the automotive industry whereas the Frigidaire employees were in the appliance industry.

At the time of the sale, a collective bargaining agreement, known as the "Bridge Agreement," was in effect which permitted Frigidaire employees to "flow" or transfer to Delco Air to receive higher rates when Delco Air needed additional employees. It also allowed Delco Air employees to bump Frigidaire employees to avoid being laid off if business declined. This Bridge Agreement provided that Frigidaire employees would retain their flow rights until all employees had been given an opportunity to transfer to Delco Air and 900 new Delco Air employees hired. Through 1979, some 2000 Frigidaire employees had transferred to Delco Air and some 3500 other Frigidaire employees had retained but not exercised their flow rights under the Bridge Agreement. There were also some 2500 Frigidaire employees hired after January 1, 1977, who had no rights under the Bridge Agreement. By its terms, this Bridge Agreement was to expire in September 1979.

Because the conversion from Frigidaire to Chevrolet was scheduled to take at least two years and

would result in the interim layoff of the Frigidaire employees, the Unions and General Motors held a series of meetings in February 1979 to address the effects of the layoff on the Frigidaire employees and to secure these workers employment at the Chevrolet plants. At this time, Delco Air employees were all actively employed, and the automobile industry was booming. As a result of these meetings, the Unions and GM reached a tentative agreement which gave Frigidaire employees the right to be employed at Chevrolet by order of seniority, and the Unions were recognized as representatives of factory employees at these Chevrolet plants. The parties also agreed to terminate the Bridge Agreement and, therefore, Delco Air employees' right to transfer to these Chevrolet plants.

These Agreements were presented for ratification in February 1979, by the members of Local 801, whose members included the employees of both Frigidaire and Delco Air. As employees of Delco Air, Petitioners were eligible to participate in the ratification of these agreements, which were ratified by the members of Local 801 and became effective on February 26, 1979.

In late 1979, the automobile industry began to suffer reductions in sales and, as a result, layoffs at Delco Air commenced and the lawsuits described above were initiated by Petitioners.

ARGUMENT

I. THE COURT OF APPEALS PROPERLY FOUND THAT PETITIONERS' STATE LAW CLAIMS WERE PREEMPTED IN ACCORDANCE WITH WELL-ESTABLISHED PRECEDENT.

The Petitioners argue that the Court of Appeals erred in deciding that all counts of this complaint were preempted. Petitioners further argue that review is warranted for this Court to clarify established precedent in regard to the issue of federal preemption in labor law cases.

Petitioners fail to recognize that since the time their action was filed, this Court has issued decisions cogently clarifying precisely when labor law claims asserted under state law are preempted by federal law.

The first in the series of cases describing the preemptive effect of Section 301 of the LMRA was *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985) in which the Court emphasized that the consequences flowing from breaches of a collective bargaining agreement must be resolved by reference to federal law, whether the question arises in the context of an action for breach of contract or an action sounding in tort. As the Court held, to determine whether an alleged state claim is preempted by federal law, the critical question is "whether evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract." *Id.* at 213. Further, "[w]hen resolution of a state-law claim is substantially dependent upon analysis of the terms of the agreement made between parties in a labor contract, that claim must either be treated as a Section 301 claim . . . or dismissed as pre-empted by federal labor contract law." *Id.* at 220

The Court addressed this issue again in *International Brotherhood of Electrical Workers v. Hechler*, 481 U.S. 851 (1987). In concluding that the plaintiff's negligence claim was preempted by Section 301, the Court indicated that where a union's tort liability could not be determined without considering "whether the collective-bargaining agreement in fact placed an implied duty of care on the Union", the matter was preempted because of the overwhelming need to create uniformity in the interpretation of the terms of collective bargaining agreements.

This Court again dealt with the preemptive force of Section 301 in *Caterpillar, Inc. v. Williams*, 482 U.S. 386 (1987), which will be addressed more fully below.

Lingle v. Norge Division of Magic Chef, Inc., 486 U.S.399 (1988) shed further light on the issue of preemption. In holding that the issue to be addressed in determining whether a state law claim was preempted is whether it is necessary to interpret the collective bargaining agreement, the Court concluded that a retaliatory discharge for filing a workers' compensation claim was not preempted because the matter turned on state law on retaliatory discharge which did not require an interpretation of the collective bargaining agreement.

From these cases, the Court has clearly enunciated the factors which determine whether an alleged state law claim is preempted or not. Initially, the fact that the claim is couched in terms of state law violations is not dispositive, as there are at least two separate and distinct grounds for preemption. One, when state law claims involve rights which flow directly from the labor contract; and secondly, when claims are de-

pendent upon analysis of the collective bargaining agreement, regardless of whether such claims are based upon rights which arise from the agreement itself.

Moreover, in considering the issue of preemption, actions against labor unions often involve claims of failure of fair representation which are governed by federal law. Thus, claims by members that they were not represented by their union either in contract negotiations or contract administration, are governed by federal law. See *Air Line Pilots Association v. O'Neill*, ___ U.S. ___ 111 S. Ct. 1127(1991); and *Vaca v. Sipes*, 386 U.S. 171 (1967).

Prior to bringing the instant case, Petitioners had unsuccessfully sued under the Labor Management Reporting and Disclosure Act, Sec 101(a)(1), in regard to the alleged failure of the Unions to properly notify them as to the ratification of the collectively bargained agreement which abrogated the Bridge Agreement. That action was lost because the statute of limitations period had run before the suit was filed.

Contrary to the arguments contained in Petitioners' Brief, the Court of Appeals below followed preemption doctrines formulated by this Court in finding that Plaintiffs' claims must be dismissed in their entirety. Petitioners' first count is that the Unions interfered with their contract rights in the "negotiation, manner of adoption, implementation and enforcement of certain bargaining agreements." This claim is obviously one grounded in federal law and Petitioners do not appear to contend that the Court of Appeals' preemption finding was improper.

Petitioners' second count involves allegations of misrepresentation of fact in the ratification process

and likewise requires judicial interpretation of the terms of the bargaining agreement to determine if such misrepresentation occurred. Such claim is so intertwined with an understanding of the agreement, that it must be preempted. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985). The District Court and Court of Appeals so found, and these findings are solidly within the preemption doctrine established by this Court in the recent cases cited above.

Petitioners third claim is that the Unions tortiously interfered with their contract rights or business relationships. The Court of Appea disposed of this allegation by deciding:

> In this case, in order to adjudicate plaintiffs' claim that a contract existed under state law, the court would have to determine that plaintiffs were offered "seniority rights" based on the "bridge agreement" after the 1979 collective-bargaining agreement, that they accepted the offer, that there was consideration, and so on. Or the court may have had to determine that plaintiffs were induced to believe that their asserted "seniority rights" under the "bridge agreement" were intact or would be respected, even if not intact, and that they relied on these representation justifiably and to their detriment. An exercise such as this necessarily involves the court in determining what the "seniority rights" under the "bridge agreement" are. It follows that adjudicating the plaintiffs' tortious interference claim necessarily involves an analysis of a collective-bargaining agreement because the contractual relation nec-

> essary to the claim is based on the representations of the president of Local 801 that their "seniority rights" would continue. For this reason, plaintiffs' tortious interference claims are fully preempted. The court below did not err in so holding. At page 20.

Petitioners argue that the rationale of *Caterpillar, Inc. v. Williams*, 482 U.S. 386 (1987) requires a different result than reached by the Court below. However, the facts of the instant case are not analogous to those critical facts of the *Caterpillar* case. Unlike *Caterpillar*, Petitioners were always members of the Unions and covered by the contracts negotiated by the Unions. Thus, their claims clearly require the interpretation of bargained-for agreements and the application of federal law. Clearly, the Court of Appeals was correct in its application of the *Caterpillar* rationale if not its holding, with respect to the allegations of the present case.

Petitioners further contend that after ratification of the elimination of the Bridge Agreement, the President of the Local Union misrepresented to them as to whether the Bridge was actually abrogated and argue that the *Caterpillar* case requires a different result than that found by the lower courts. However, as the courts below found, to decide whether there was a misrepresentation requires an interpretation of the collective bargaining agreement and is, therefore, an allegation, however framed, preempted by federal law.

The last claim of the Petitioners' case is that the conduct of the Unions caused severe emotional distress to these union members, or the allegation that by proposing modifications to the collective bargaining

agreement and in the procedures utilized to ratify these agreements, the Unions caused Petitioners emotional distress.

Obviously, this claim requires an interpretation of the bargaining agreement to determine what modifications in the applicable agreement were made or whether the Unions did or did not properly inform Petitioners of changes made in the collective bargaining agreements. To determine if the contractual change caused Petitioners emotional distress, a court has to interpret the terms of the agreements as they existed before and after the change to decide whether the Petitioners were adequately notified of the changes and the consequences of negotiations. Petitioners rights and the conduct which is at issue in this allegation are "inextricably intertwined" with the actual terms of the collective bargaining agreement. This Court stated in *Allis-Chalmers Corp v. Lueck*, 471 U.S. 202, 213 (1985), "if the . . . state tort law purports to define the meaning of the contract relationship, that law is preempted." The need for uniformity in the interpretation of contract terms precludes Petitioners from evading the preemptive effect of Section 301 by framing their claim as a state law tort action. *International Brotherhood of Electrical Workers v. Hechler*, 481 U.S. 851 (1987). The arguments advanced by Petitioners to show that this state-law claim is not preempted are spurious and not supported by the decisions of this Court.

As bargaining representatives, the Unions have a wide range of reasonableness in carrying out their representation duties. The emotional distress claim by Petitioners is nothing more than an allegation that the Unions violated the duty of fair representation

owed to Petitioners cast in state law terms. It is well established that federal law governs this type of claim, and equally clear that an action brought against a labor union for claimed misrepresentations made during ratification meetings are a violation of the duty of fair representation. *Storey v. Local 327, International Brotherhood of Teamsters*, 759 F.2d 517 (6th Cir. 1985) and *Anderson v. United Paper Workers International Union*, 641 F.2d 574 (8th Cir. 1981). It is equally settled, as the Court of Appeals found below, that such a cause of action is completely preempted by federal law. *United Steelworkers of America v. Rawson*, 495 U.S. 362 (1990).

II. THE PETITIONERS ERR IN ASSERTING A CONFLICT BETWEEN THE OPINION OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT IN THE PRESENT CASE AND THE OPINION OF THE COURT OF APPEALS IN *WELLS V. GENERAL MOTORS CORPORATION*, 881 F.2d 166 (5th Cir. 1989).

The *Wells* case, so heavily relied upon by Petitioners, was filed by a group of employees who had received separation pay pursuant to an agreement negotiated by the employees' union and General Motors. The suit in *Wells*, however, was filed only against General Motors based upon an allegation that a representative of General Motors informed these workers that they would be eligible to be rehired, or, in the reverse, that representations by General Motors were false and injurious.

The *Wells* Court held that because the case *did not* require an interpretation of any collectively-bargained agreement, the action was not preempted by federal law. Rather than being in conflict with *Wells*, the rationale of the Court of Appeals for the Sixth Circuit

in the instant case, is based upon precisely the same reasoning, albeit radically different facts. That both cases involved charges of alleged "misrepresentation" does not render their dispositions to be conflicting. In this case, misrepresentations are charged against representatives of the Unions, which is therefore a question concerning a failure to properly represent these workers, an issue governed by federal law and the Court below properly found the matter to be preempted.

Accordingly, it is submitted that the Petitioners have not shown a conflict between the circuits in order to warrant review by this Court of this case.

For this essential reason, the decision of the Court below is not in conflict with the rationale of the *Wells* court, or any of the other decisions referred to by Petitioners.

CONCLUSION

On the basis of the foregoing and arguments submitted by Respondent General Motors, it is respectfully submitted that the Petitioners' Writ for Certiorari should be denied

Dated: April 15, 1992.

Respectfully submitted,

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